



1 ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

2 Department for Environmental Protection

3 Division of Waste Management

4 (Amendment)

5 401 KAR 42:011. Scope of Underground Storage Tank Program.

6 RELATES TO: KRS 224.10, 224.60, 40 CFR Part 280 Subpart A, Part 281, 42 U.S.C.
7 6991c

8 STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 40 CFR Part 280 Subpart
9 A, Part 281, 42 U.S.C. 6991c

10 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the
11 Environmental and Public Protection Cabinet [~~Natural Resources and Environmental Protection~~
12 ~~Cabinet~~] to develop and conduct programs that provide for the prevention, abatement, and
13 control of contaminants that may threaten the environment. KRS 224.60-105 [(2)] requires the
14 cabinet to regulate underground storage tank (UST) systems by requiring registration
15 [~~notification~~], minimum construction and performance standards, leak detection, recordkeeping,
16 release reporting, corrective action, closure, financial responsibility and other standards to
17 protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a
18 regulatory program that implements federal requirements for UST systems. This chapter
19 identifies requirements for UST systems. This administrative regulation establishes the scope of
20 the cabinet's Underground Storage Tank Program, including provisions for exclusions, deferrals,
21 and interim prohibitions.

Section 1. Applicability, Exclusions and Deferrals. The requirements of this chapter apply to all owners and operators of UST systems, except as provided in subsections (1) and (2) of this section. Any UST system listed in subsection (2) of this section shall meet the requirements of Section 2 of this administrative regulation.

(1) Exclusions. The following UST systems are excluded from the requirements of this chapter:

(a) UST systems containing wastes identified as hazardous in 401 KAR Chapter 31, and UST systems containing mixtures of hazardous waste and other regulated substances;

(b) Wastewater treatment tank systems that are part of a wastewater treatment facility regulated under the Clean Water Act, as amended (33 U.S.C. 1251 et seq.);

(c) Equipment and machinery containing regulated substances for operational purposes, such as hydraulic lift tanks and electrical equipment tanks;

(d) UST systems having a capacity of 110 gallons or less;

(e) UST systems containing a de minimis concentration of regulated substances;

(f) Emergency spill or overflow containment UST systems that are emptied immediately after use; and

(g) UST systems excluded from the definition of "underground storage tank" provided in KRS 224.60-100.

(2) Deferrals. This subsection identifies UST systems that are deferred from compliance with some of the requirements of 401 KAR Chapter 42.

(a) 401 KAR 42:040 does not apply to UST systems that store fuel solely for use by emergency power generators.

(b) 401 KAR 42:020, 401 KAR 42:030, 401 KAR 42:040, and 401 KAR 42:050 do not apply to the following UST systems:

1. Wastewater treatment tank systems that are not part of a wastewater treatment facility regulated under the Clean Water Act, as amended (33 U.S.C. 1251 et seq.);

2. UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.);

3. UST systems that are part of an emergency generator system at a nuclear power generation facility regulated by the Nuclear Regulatory Commission under Appendix A of 10 CFR Part 50;

4. Airport hydrant fuel distribution systems; and

5. UST systems with field-constructed tanks.

(3) Dual-purpose UST Systems. UST systems used for dual purposes, one of which is regulated, shall meet the requirements of 401 KAR Chapter 42.

Section 2. Interim Prohibition for Deferred UST Systems. (1) Except as provided in subsection (2) of this section, no person shall install a UST system listed in Section 1(2) of this administrative regulation for the purpose of storing regulated substances unless the system (whether of single- or double-wall construction):

(a) Will prevent UST system releases due to corrosion or structural failure for the operational life of the UST system;

(b) Is cathodically protected against corrosion, constructed of noncorrodible material, steel clad with a noncorrodible material, or designed in a manner to prevent a ~~the~~ UST system release ~~[of any stored substance]~~; and

(c) Is constructed or lined with material that is compatible with the stored substance.

1 (2)(a) A UST system without corrosion protection may be installed at a UST facility
2 [site] that is determined by a corrosion expert not to be corrosive enough to cause it to have a
3 UST system release due to corrosion during its operating life.

4 (b) Owners and operators shall maintain records that demonstrate compliance with
5 paragraph (a) of this subsection for the remaining life of the tank.

6 (3) The document incorporated by reference in Section 3 of this administrative regulation
7 shall be used in meeting the requirements of subsections (1) and (2) of this section.

8 Section 3. Incorporation by Reference. (1) The following document is [~~hereby~~]
9 incorporated by reference: The National Association of Corrosion Engineers Standard RP0285-
10 2002 [~~RP0285-95~~], Item Number 21030, "Corrosion Control of Underground Storage Tank
11 Systems by Cathodic Protection" (April 2002) [~~(Revised February 1995)~~].

12 (2) The document referenced in [~~subsection (1) of~~] this section is available for inspection
13 and copying, subject to copyright law, at the Underground Storage Tank Branch [~~of the Division~~
14 ~~of Waste Management~~], 81 C. Michael Davenport Blvd., Frankfort, Kentucky 40601, 502-564-
15 5981 [~~14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716~~], from 8 a.m. to 4:30 p.m.
16 eastern time, Monday through Friday, excluding state holidays [~~holidays.~~] and may also be
17 obtained on the Division of Waste Management's web page located at www.waste.ky.gov.

401 KAR 42:011 is approved for filing.

4-12-2006

Date

John W. Clay

John W. Clay, Deputy Secretary
Environmental and Public Protection Cabinet

for

LaJuana S. Wilcher, Secretary
Environmental and Public Protection Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2006 at 10:00 AM (Eastern Time) at the Capital Plaza Tower Auditorium, 500 Mero Street, Room 228, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 2006, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Bruce Scott, P. E., Director
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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 401 KAR 42:011

Contact person: Bruce Scott, Director

(1) Provide a brief summary of:

- (a) What this administrative regulation does: This administrative regulation establishes the scope of the cabinet's Underground Storage Tank Program, including provisions for exclusions, deferrals and interim prohibitions.
- (b) The necessity of this administrative regulation: This administrative regulation is necessary to distinguish the types of underground storage tanks that are regulated. The parameters include storage capacity, type of substance stored, UST construction standards and preventing the release of regulated substances.
- (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms by establishing the scope of the cabinet's Underground Storage Tank Program described under KRS 224.60-105.
- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists by establishing the scope of the cabinet's Underground Storage Tank Program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

- (a) How the amendment will change this existing administrative regulation: This amendment serves to update the incorporated material and to clarify the applicability of this administrative regulation for dual-purpose UST systems.
- (b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify terminology used for USTs versus petroleum storage tanks.
- (c) How the amendment conforms to the context of the authorizing statutes: This amendment conforms by establishing the scope of the cabinet's Underground Storage Tank Program described under KRS 224.60-105.
- (d) How the amendment will assist in the effective administration of the statutes: This amendment assists by establishing the scope of the cabinet's Underground Storage Tank Program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect those individuals that own and operate underground storage tanks in the Commonwealth of Kentucky, approximately 13,400. UST contractors that operate in the Commonwealth of Kentucky will also be affected by this regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: This amendment serves to clarify the term "release" to mean a "UST system release".

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

- (a) Initially: There will be no costs associated with implementation of this administrative regulation.
- (b) On a continuing basis: There will be no additional costs associated with the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation is funded through two Federal grants and the restricted fund receipts described in KRS 224.60-150.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There is no need for an increase in funding or fees to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees.

(9) TIERING: Is tiering applied? (Explain why tiering was or was not used.)

No tiering is applied. This administrative regulation applies to all owners and operators of USTs. To apply tiering to the amendment would unduly regulate some entities with USTs while not regulating others.

FISCAL NOTE ON LOCAL GOVERNMENT

Administrative Regulation #: 401 KAR 42:011

Contact person: Bruce Scott, Director

Phone Number: (502) 564-6716

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes X No If yes, complete question 2 to 4. If no, you do not need to file this form.

2. State what unit, part, or division of local government this administrative regulation will affect.

This amendment may affect local governments that own or operate underground storage tanks.

3. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the aspect or service or authorizes the action taken by the administrative regulation.

This amendment relates to the agents of local government that own or operate underground storage tanks. KRS 224.60-105 authorizes the promulgation of this administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): No effect.

Expenditures (+/-): No effect.

Other Explanation: The cabinet expects no significant impacts from this administrative regulation.

**DETAILED SUMMARY OF MATERIAL
INCORPORATED BY REFERENCE IN
401 KAR 42:011**

I. This administrative regulation incorporates by reference "Corrosion Control of Underground Storage Tank Systems by Cathodic Protection". This document is used for guidance in the use of cathodic protection systems as a means of controlling the corrosion of underground storage tanks.

This document consists of 17 pages.